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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 RICHARD PLECHNER,

7 Plaintiff,

v.

8 ROB McKENNA (Attorney General for the
9 State of Washington), STATE OF
10 WASHINGTON DEPARTMENT OF
CORRECTIONS, ELDON VAIL (Secretary),
PAT GLEBE (Superintendent of SCCC),
DOUG WADDINGTON (Superintendent of
WCC), and RON FRAKER (Superintendent
of CBCC),

13 Defendants.

14 No. C11-5544 RBL/KLS

15 ORDER TO AMEND OR SHOW CAUSE

16 This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28
U.S.C. § 636(b)(1), Local Rules MJR 3 and 4. Plaintiff's application to proceed *in forma*
pauperis has been granted under separate Order. ECF No. 3. Presently before the Court for
review is Plaintiff's civil rights complaint. ECF No. 4. After review, the Court declines to serve
the complaint because it is deficient.

20 **DISCUSSION**

21 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
complaints brought by prisoners seeking relief against a governmental entity or officer or
employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint
or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that
fail to state a claim upon which relief may be granted, or that seek monetary relief from a

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1 defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2); See
2 *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

3 A complaint is legally frivolous when it lacks an arguable basis in law or fact. *Neitzke v.*
4 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir.
5 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
6 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,
7 490 U.S. at 327. A complaint or portion thereof, will be dismissed for failure to state a claim
8 upon which relief may be granted if it appears the “[f]actual allegations . . . [fail to] raise a right
9 to relief above the speculative level, on the assumption that all the allegations in the complaint
10 are true.” *See Bell Atlantic, Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007) (citations omitted).
11 In other words, failure to present enough facts to state a claim for relief that is plausible on the
12 face of the complaint will subject that complaint to dismissal. *Id.* at 1974.

13 Although complaints are to be liberally construed in a plaintiff’s favor, conclusory
14 allegations of the law, unsupported conclusions, and unwarranted inferences need not be
15 accepted as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Neither can the court supply
16 essential facts that an inmate has failed to plead. *Pena*, 976 F.2d at 471 (quoting *Ivey v. Board of*
17 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)). Unless it is absolutely clear that
18 amendment would be futile, however, a pro se litigant must be given the opportunity to amend
19 his complaint to correct any deficiencies. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).

20 Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, “the complaint [must
21 provide] ‘the defendant fair notice of what the plaintiff’s claim is and the ground upon which it
22 rests.’” *Kimes v. Stone* 84 F.3d 1121, 1129 (9th Cir. 1996) (citations omitted). In addition, in
23 order to obtain relief against a defendant under 42 U.S.C. § 1983, a plaintiff must prove that the
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1 particular defendant has caused or personally participated in causing the deprivation of a
2 particular protected constitutional right. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).
3 To be liable for “causing” the deprivation of a constitutional right, the particular defendant must
4 commit an affirmative act, or omit to perform an act, that he or she is legally required to do, and
5 which causes the plaintiff’s deprivation. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

6 Plaintiff claims generally that since June 17, 2009 he has been deprived of newspapers,
7 magazines, television and radio. He claims that he has been denied proper care for his medical
8 problems and mental health issues, family visits, educational and/or vocational programs,
9 envelopes, and access to a telephone to contact his attorney. From the grievances attached to his
10 complaint, it appears that Plaintiff claims to suffer from hearing loss, degenerative disc and bone
11 disease and arthritis. He also alleges that he has been limited to 5 grievances, thus limiting his
12 right to seek redress. ECF No. 5.

14 Plaintiff sues the Washington Department of Corrections (DOC), the attorney general of
15 the state of Washington, the former secretary of DOC, and the superintendents of various
16 facilities where Plaintiff has been housed. The DOC is not a “person” for purposes of a section
17 1983 civil rights action. Section 1983 authorizes assertion of a claim for relief against a
18 “person” who acted under color of state law. A suable §1983 “person” encompasses state and
19 local officials sued in their personal capacities, municipal entities, and municipal officials sued in
20 an official capacity. See also, *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989).
22 Further, Plaintiff fails to allege what the individually named defendants did or did not do that
23 caused him constitutional harm.

25 Under 42 U.S.C. § 1983, claims can only be brought against people who personally
26 participated in causing the alleged deprivation of a right. *Arnold v. IBM*, 637 F.2d 1350, 1355

1 (9th Cir. 1981). Neither a State nor its officials acting in their official capacities are "persons"
2 under section 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). Plaintiff
3 must set forth factual allegations and allege with specificity the names of the persons who caused
4 or personally participated in causing the alleged deprivation of his constitutional rights. A
5 defendant cannot be held liable under 42 U.S.C. § 1983 solely on the basis of supervisory
6 responsibility or position. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 694
7 n.58 (1978). A theory of *respondeat superior* is not sufficient to state a § 1983 claim. *Padway v.*
8 *Palches*, 665 F.2d 965 (9th Cir. 1982).

10 Plaintiff must allege with specificity the names of the individual persons who caused or
11 personally participated in causing the alleged deprivation of his constitutional rights and what
12 they have done or failed to do that resulted in the deprivation of his constitutional rights.
13 Plaintiff may not simply rely on naming the heads of various institutions because supervisors
14 cannot be held liable for the actions or non-actions of their subordinates merely because they are
15 supervisors.

17 Due to the deficiencies described above, the Court will not serve the complaint. Plaintiff
18 may file an amended complaint curing, if possible, the above noted deficiencies, or show cause
19 explaining why this matter should not be dismissed no later than **August 26, 2011**. If Plaintiff
20 chooses to amend his complaint, he must demonstrate how the conditions complained of have
21 resulted in a deprivation of his constitutional rights. The complaint must allege in specific terms
22 how each named defendant is involved.

24 The amended complaint must set forth all of Plaintiff's factual claims, causes of action,
25 and claims for relief. Plaintiff shall set forth his factual allegations **in separately numbered**
26 **paragraphs** and shall allege with specificity the following:

- (1) the names of the persons who caused or personally participated in causing the deprivation of his constitutional rights;
 - (2) the dates on which the conduct of each Defendant allegedly took place; and
 - (3) the specific conduct or action Plaintiff alleges is unconstitutional.

An amended complaint operates as a complete substitute for (rather than a mere supplement to) the present complaint. In other words, an amended complaint supersedes the original in its entirety, making the original as if it never existed. Therefore, reference to a prior pleading or another document is unacceptable – once Plaintiff files an amended complaint, the original pleading or pleadings will no longer serve any function in this case. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) (as a general rule, an amended complaint supersedes the prior complaint). Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

Plaintiff shall present his complaint on the form provided by the court. The amended complaint must be **legibly rewritten or retyped in its entirety**, it should be an original and not a copy, it may not incorporate any part of the original complaint by reference, and it must be clearly labeled the “Amended Complaint” and must contain the same cause number as this case. Plaintiff should complete all sections of the court’s form. Plaintiff may attach continuation pages as needed but may not attach a separate document that purports to be his amended complaint. **Plaintiff is advised that he should make a short and plain statement of claims against the defendants. He may do so by listing his complaints in separately numbered paragraphs. He should include facts explaining how each defendant was involved in the denial of his rights.**

The Court will screen the amended complaint to determine whether it contains factual allegations linking each defendant to the alleged violations of Plaintiff's rights. The Court will not authorize service of the amended complaint on any Defendant who is not specifically linked to the violation of Plaintiff's rights.

If Plaintiff decides to file an amended civil rights complaint in this action, he is cautioned that if the amended complaint is not timely filed or if he fails to adequately address the issues raised herein on or before **August 26, 2011**, the Court will recommend dismissal of this action as frivolous pursuant to 28 U.S.C. § 1915 and the dismissal will count as a “strike” under 28 U.S.C. § 1915(g). Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings three or more civil actions or appeals which are dismissed on grounds they are legally frivolous, malicious, or fail to state a claim, will be precluded from bringing any other civil action or appeal in forma pauperis “unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. 1983 civil rights complaint and for service. The Clerk is further directed to send a copy of this Order and a copy of the General Order to Plaintiff.

DATED this 1st day of August, 2011.

Karen L. Strombom
Karen L. Strombom
United States Magistrate Judge